

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DIXIE F. KING and U.S. POSTAL SERVICE,  
POST OFFICE, Englewood, CO

*Docket No. 00-2077; Submitted on the Record;  
Issued March 15, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment in the amount of \$2,981.22 for the period November 12, 1997 through March 25, 2000; and (2) whether the Office properly determined that appellant was not entitled to a waiver of recovery of the overpayment.

By letter dated April 11, 2000, the Office advised appellant that she had received an overpayment of benefits in the amount of \$2,981.22. The Office explained that the overpayment resulted from the incorrect withholding of insurance premiums during the period November 12, 1997 through March 25, 2000. The Office further advised appellant that she was not at fault in creating the overpayment.

Appellant subsequently requested a waiver of recovery of the overpayment and she provided information regarding her monthly expenses, which reportedly totaled \$1,925.00.

By decision dated May 4, 2000, the Office denied appellant's request for waiver of the overpayment. The Office explained that appellant's net monthly compensation of \$2,151.28 exceeded her reported monthly expenses by \$226.28. Accordingly, the Office determined that appellant was financially capable of repaying the debt at a rate of \$100.00 per month, which was to be withheld from appellant's ongoing compensation benefits.

The Board finds that appellant received an overpayment in the amount of \$2,981.22.

The record indicates that the Office neglected to deduct adequate premiums for appellant's life insurance benefits during the period November 12, 1997 through March 25, 2000. When this oversight was discovered, the Office promptly notified appellant of the situation and proceeded to deduct the appropriate amount beginning April 22, 2000. Accordingly, the Office's determination of the amount of the overpayment is proper and is supported by the evidence of record.

The Board further finds that the Office properly determined that appellant was not entitled to a waiver of recovery of the overpayment.

Under section 8129 of the Federal Employees' Compensation Act and the implementing regulation, an overpayment must be recovered unless incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience.<sup>1</sup>

In this case, the Office found that appellant was without fault in the creation of the overpayment. However, a finding that appellant was without fault is not sufficient, in and of itself, for the Office to waive recovery of the overpayment.<sup>2</sup> Section 10.434 of the implementing regulation specifically provides that if the Office finds that the recipient of an overpayment was not at fault, "repayment will still be required" unless adjustment or recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience.<sup>3</sup>

Pursuant to section 10.436 recovery of an overpayment will defeat the purpose of the Act if such recovery would cause hardship to a currently or formerly entitled beneficiary because: (a) the beneficiary from whom the Office seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses; and (b) the beneficiary's assets do not exceed a specified amount as determined by the Office based upon data furnished by the Bureau of Labor Statistics.<sup>4</sup>

An individual is deemed to need substantially all of his or her current income to meet ordinary and necessary living expenses if monthly income does not exceed expenses by more than \$50.00.<sup>5</sup> Appellant reported monthly expenses of \$1,925.00. The Office correctly noted that appellant's net monthly compensation of \$2,151.28 exceeded her reported monthly expenses by \$226.28. Inasmuch as appellant's monthly household income exceeds her reported expenses by more than \$50.00, appellant has failed to demonstrate that she needs substantially all of her current income to meet ordinary and necessary living expenses.<sup>6</sup>

Section 10.437 provides that recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt.<sup>7</sup> Additionally, recovery is considered to be against equity and good conscience when any individual, in reliance on such

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<sup>1</sup> 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.430, 10.433, 10.434, 10.436, 10.437 (1999); see *James H. Hopkins*, 48 ECAB 281, 287 (1997); *Michael H. Wacks*, 45 ECAB 791, 795 (1994).

<sup>2</sup> *Marlon G. Massey*, 49 ECAB 650, 652 (1998).

<sup>3</sup> 20 C.F.R. § 10.434 (1999).

<sup>4</sup> 20 C.F.R. § 10.436 (a), (b) (1999).

<sup>5</sup> *Marlon G. Massey*, *supra* note 2.

<sup>6</sup> *Id.*

<sup>7</sup> 20 C.F.R. § 10.437(a) (1999).

payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>8</sup> With respect to this latter determination, the individual's current ability to repay the overpayment is not considered.<sup>9</sup>

To establish that a valuable right was relinquished, the individual must show that the right was in fact valuable, that it cannot be regained and that the action taken was based chiefly or solely in reliance on the payments or on the notice of payment.<sup>10</sup> To establish that an individual's position has changed for the worse, it must be shown that the decision made would not otherwise have been made but for the receipt of benefits and that this decision resulted in a loss.<sup>11</sup>

The issue of whether appellant would experience severe financial hardship in attempting to repay the debt has been resolved. As previously noted, appellant failed to demonstrate that she needs substantially all of her current income to meet ordinary and necessary living expenses. Consequently, appellant cannot satisfy the requirements of section 10.437(a). Additionally, there is no evidence in this case, nor did appellant allege, that pursuant to section 10.437(b) she relinquished a valuable right or changed her position for the worse in reliance on the excess compensation she received. The Board, therefore, finds that the Office did not abuse its discretion in denying waiver of recovery of the overpayment. Additionally, the Board finds that the Office properly deducted \$100.00 a month from appellant's continuing compensation payments in accordance with section 10.441(a).<sup>12</sup>

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<sup>8</sup> 20 C.F.R. § 10.437(b) (1999).

<sup>9</sup> *Id.*

<sup>10</sup> 20 C.F.R. § 10.437(b)(1) (1999).

<sup>11</sup> 20 C.F.R. § 10.437(b)(2) (1999).

<sup>12</sup> 20 C.F.R. § 10.441(a) (1999).

The May 4, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
March 15, 2002

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member